

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEELA ABRAHAM, et al.,	:	Case No. 12-cv-4686-WFK-JMA
	:	
Plaintiffs,	:	
	:	
- against -	:	
	:	
AMERICAN HOME MORTGAGE SERVICING, INC., et al.,	:	
	:	
Defendants.	:	
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SUPPLEMENTAL SUBMISSION OF DEFENDANTS

ALLY FINANCIAL INC.; AURORA LOAN SERVICES, LLC; BANK OF AMERICA, N.A., FOR ITSELF AND AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP; BAYVIEW LOAN SERVICING, LLC; BB&T CORPORATION; BRANCH BANKING AND TRUST COMPANY; CARRINGTON MORTGAGE SERVICES, LLC; CENLAR FSB; CITIMORTGAGE, INC.; COUNTRYWIDE HOME LOANS, INC.; EVERBANK SUCCESSOR BY MERGER TO EVERHOME MORTGAGE COMPANY; FLAGSTAR BANCORP, INC.; FNF SERVICING, INC. F/K/A LOANCARE SERVICING CENTER, INC.; GREEN TREE SERVICING LLC; HOMEWARD RESIDENTIAL, INC., F/K/A AMERICAN HOME MORTGAGE SERVICING, INC.; HSBC MORTGAGE SERVICES, INC.; JPMORGAN CHASE BANK, N.A.; LITTON LOAN SERVICING LP; M&T BANK; MERRILL LYNCH & CO., INC.; MERSCORP, INC. N/K/A MERSCORP HOLDINGS, INC.; NATIONSTAR MORTGAGE, LLC; OCWEN FINANCIAL CORPORATION; PHH MORTGAGE CORPORATION; PNC BANK, NATIONAL ASSOCIATION; REGIONS BANK; SAXON MORTGAGE, INC.; SELECT PORTFOLIO SERVICING, INC.; SETERUS, INC.; SOVEREIGN BANK, N.A.; SPECIALIZED LOAN SERVICING, LLC; SUNTRUST MORTGAGE, INC.; U.S. BANK NATIONAL ASSOCIATION; VERICREST FINANCIAL, INC.; WELLS FARGO BANK, N.A.; AND WELLS FARGO BANK, N.A. D/B/A AMERICA'S SERVICING COMPANY IN SUPPORT OF THEIR MOTION TO SEVER AND DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants Ally Financial Inc.; Aurora Loan Services, LLC; Bank of America, N.A., (for itself and as successor by merger to BAC Home Loans Servicing, LP, incorrectly sued herein as f/k/a Countrywide Home Loan Servicing); Bayview Loan Servicing, LLC (incorrectly sued herein as Bayview); BB&T Corporation; Branch Banking and Trust Company; Carrington Mortgage Services, LLC; CENLAR FSB; CitiMortgage, Inc.; Countrywide Home Loans, Inc.; EverBank successor by merger to EverHome Mortgage Company; Flagstar Bancorp, Inc.; FNF Servicing, Inc. f/k/a LoanCare Servicing Center, Inc.; Green Tree Servicing LLC; Homeward Residential, Inc. f/k/a American Home Mortgage Servicing, Inc.; HSBC Mortgage Services, Inc.; JPMorgan Chase Bank, N.A.; Litton Loan Servicing LP; M&T Bank; Merrill Lynch & Co., Inc.; MERSCORP, Inc. n/k/a MERSCORP Holdings, Inc.; Nationstar Mortgage, LLC; Ocwen Financial Corporation; PHH Mortgage Corporation; PNC Bank, National Association; Regions Bank; Saxon Mortgage, Inc.; Select Portfolio Servicing, Inc.; Seterus, Inc.; Sovereign Bank, N.A.; Specialized Loan Servicing, LLC; SunTrust Mortgage, Inc.; U.S. Bank National Association (incorrectly sued as “US Bancorp, a/k/a US Bank, N.A.”); Vericrest Financial, Inc.; Wells Fargo Bank, N.A.; and Wells Fargo Bank, N.A. d/b/a America’s Servicing Company (collectively, “Defendants”) respectfully make this supplemental submission in support of their motion to sever and/or dismiss, in accordance with the Court’s directive at the February 5, 2013 oral argument that the parties address any remaining open issues or inquiries made by the Court.

I. This Court Should Retain Jurisdiction Over Leela Abraham’s Claims After Severing The Claims Of All Other Plaintiffs.

At oral argument, drawing a parallel between this case and the case of *Abeel, et al. v. Bank of America, N.A., et al.*, (Case No. 12-CV-4269), presided over by Judge Weinstein, the Court specifically inquired whether the lead Plaintiff, Leela Abraham, should be remanded to

state court if the other Plaintiffs are dismissed as misjoined. (*See* Transcript of Oral Argument at page 14, lines 19 – 24, attached as Exhibit 1).

If the Court dismisses all Plaintiffs except Leela Abraham as misjoined, it would retain jurisdiction over Abraham and should dismiss her claims with prejudice for the reasons set forth in Defendants’ Rule 12(b)(6) motion to dismiss. The Court is not divested of jurisdiction simply because of a post-removal finding of misjoinder. *See Weiner v. Snapple Bev. Corp.*, 2011 U.S. Dist. LEXIS 6094 (S.D.N.Y. Jan. 2011). In *Weiner*, a putative class action was removed to federal court pursuant to CAFA. The *Weiner* court denied the plaintiff’s motion for class certification, leaving the court “to address the question of whether the denial of class certification divested this Court of subject matter jurisdiction over this case.” *Id.* at *4. The court noted that, “[a]s it currently stands, the lawsuit does not satisfy the requirements of original diversity jurisdiction set forth in 28 U.S.C. § 1332(a).” *Id.* Nonetheless, the court noted that the appellate circuits that have considered the issue “have uniformly concluded that federal jurisdiction under CAFA does not depend on class certification.” *Id.* at *5. The court held that it “retains jurisdiction over this case” because “federal jurisdiction is determined at the outset of the litigation.” *Id.* at *5-6.

For the same reasons, this Court retains jurisdiction over Abraham, even if she is not in complete diversity with all Defendants because federal jurisdiction was determined at the outset of the litigation, when this case was properly removed under CAFA.¹

¹ Because CAFA allows the Court to retain jurisdiction following a finding of misjoinder, it need not undertake an original diversity jurisdiction analysis pursuant to 28 U.S.C. § 1332(a). However, confirming the information provided in response to the Court’s question during oral argument, Abraham, a citizen of New York, is a borrower of Bank of America, N.A., which is not a citizen of New York.

II. Plaintiffs Have Already Been Provided The Opportunity To Amend The Complaint

At the oral argument, Plaintiffs argued that they should be provided leave to amend the Second Amended Complaint and permitted to file a Third Amended Complaint. Plaintiffs asserted that their Second Amended Complaint solely addressed correcting typographical errors and conforming with federal court requirements, whatever that may mean. (*See* Transcript of Oral Argument at page 37, lines 6-13 and page 43, lines 3-18, attached as Exhibit 1).

This assertion is not true. Plaintiffs had ample opportunity to make substantive revisions to the First Amended Complaint. For example, in an apparent response to a request made by counsel to J.P. Morgan Chase Bank N.A. that Plaintiffs' amended complaint "be required to tie each individual plaintiff to each individual defendant," and the Court's response to that request, "I won't tell plaintiff's counsel how to draft his Second Amended Complaint, but, obviously, to the extent he makes himself even more vulnerable to a motion to dismiss ... that's a risk that he and his clients will be running or not running, as the case may be," Plaintiffs added Paragraphs 402 through 437 in an attempt to link each Plaintiff to a particular defendant. (*See* Transcript of Pre-Motion Conference at page 22, line 21 through page 23, line 16, attached as Exhibit 2). Responding to Plaintiffs' recognition that the First Amended Complaint contained "defects" that should be amended to give defendants a complaint "they can attack," (*Id.* at page 17, lines 20-22), the Court specifically noted that the Second Amended Complaint "gives the plaintiff an opportunity to modify – I won't say tweak, clean up – I will just say modify the Complaint." (*Id.* at page 19, lines 22 through 24). That Plaintiffs failed to take advantage of the opportunity provided by the Court to bolster their Second Amended Complaint should not subject the Defendants to additional motion practice.

Dated: February 15, 2013
New York, New York

BRYAN CAVE LLP

By: /s/ Scott H. Kaiser
Christine B. Cesare
Scott H. Kaiser
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 541-2000
Facsimile: (212) 541-4630
cbcesare@bryancave.com
scott.kaiser@bryancave.com

Nafiz Cekirge
120 Broadway, Suite 300
Santa Monica, California 90401
Telephone: (310) 576-2100
Facsimile: (310) 576-2200
nafiz.cekirge@bryancave.com

*Attorneys for Bank of America, N.A., for itself
and as successor by merger to BAC Home Loans
Servicing, LP, Countrywide Home Loans, Inc.,
and Merrill Lynch & Co., Inc.*

HOGAN LOVELLS US LLP

By: /s/ Allison J. Schoenthal
Allison J. Schoenthal
Lisa J. Fried
875 Third Avenue
New York, New York 10022
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
allison.schoenthal@hoganlovells.com
lisa.fried@hoganlovells.com

*Attorneys for Defendants Flagstar
Bancorp, Inc., Seterus, Inc.,
Wells Fargo Bank, N.A. and
Wells Fargo Bank, N.A. d/b/a
America's Servicing Company*

BUCKLEY SANDLER LLP

By: /s/ Matthew P. Previn
Matthew P. Previn
1133 Avenue of the Americas, Suite 3100
New York, New York 10036-6710
Telephone: (212) 600-2310
Facsimile: (212) 600-2405
mprevin@buckleysandler.com

Attorneys for JPMorgan Chase Bank, N.A.

KNUCKLES KOMOSINSKI & ELLIOTT, LLP

By: /s/ Jordan J. Manfro
Jordan J. Manfro, Esq.
565 Taxter Road, Suite 590
Elmsford, NY 10523
Telephone: (914) 345-3020
Facsimile: (914) 366-0080
JJM@kkelaw.com

*Attorneys for Carrington Mortgage Services, LLC
and Specialized Loan Servicing, LLC*

HUSCH BLACKWELL LLP

By: /s/ JoAnn T. Sandifer
JoAnn T. Sandifer
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Telephone: (314) 480-1500
Facsimile: (314) 480-1505
JoAnn.Sandifer@huschblackwell.com

Daniel P. Jaffe
60 East 42nd Street, Suite 4600
New York, NY 10165
Telephone: (212) 485-9805
Facsimile: (314) 480-1505
Dan.Jaffe@huschblackwell.com

Attorneys for Defendant Regions Bank

DYKEMA GOSSETT PLLC

By: /s/ Richard E. Gottlieb
Richard E. Gottlieb (RG 0935)
10 South Wacker, Suite 2300
Chicago, IL 60606
Telephone: (312) 876-1700
Facsimile: (312) 876-1155
rgottlieb@dykema.com

Attorneys for Defendant PNC Bank, National Association

OTTERBOURG, STEINDLER, HOUSTON
& ROSEN, P.C.

By: /s/ Richard G. Haddad
Richard G. Haddad (RG 6438)
Member of the Firm
230 Park Avenue
New York, NY 10169-0075
Telephone: (212) 661-9100
Facsimile: (212) 682-6104
rhaddad@oshr.com

Attorneys for Defendant Ally Financial Inc.

K&L GATES LLP

By: /s/ R. Bruce Allensworth
R. Bruce Allensworth, *pro hac vice*
Brian M. Forbes, *pro hac vice*
State Street Financial Center
One Lincoln Street
Boston, MA 02111
Telephone: (617) 261-3100
Facsimile: (617) 261-3175
bruce.allensworth@klgates.com
brian.m.forbes@klgates.com

David S. Versfelt (SBN 1379817)
599 Lexington Avenue
New York, NY 10022
Telephone.: 212.536.3900
Facsimile: 212.308.6661
david.versfelt@klgates.com

*Attorneys for Defendants Litton Loan Servicing LP
and Ocwen Financial Corporation*

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Brian A. Herman
Brian A. Herman
David A. Snider
101 Park Avenue
New York, New York 10078
(212) 309-6909/6223
bherman@morganlewis.com
dsnider@morganlewis.com

Robert M. Brochin
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
(305) 415-3456
rbrochin@morganlewis.com

*Attorneys for Defendant MERSCORP, INC., n/k/a
MERSCORP Holdings, Inc.*

HOUSER & ALLISON, APC

By: /s/ Mitra Paul Singh, Esq.
Mitra Paul Singh, Esq.
60 East 42nd Street, Suite 1148
New York, NY 10165
Telephone: (212) 490-3333
Facsimile: (212) 490-3332
msingh@houser-law.com

Attorneys for Defendant Bayview Loan Servicing, LLC

HODGSON RUSS LLP

By: /s/ S. Robert Schrager
S. Robert Schrager
1540 Broadway, 24th Floor
New York, NY 10036
Telephone: 212-751-4300
rschrager@hodgsonruss.com

Attorneys for M&T Bank

STEVENS & LEE, P.C.

By: /s/ Bradley L. Mitchell
Bradley L. Mitchell, Esq.
Constantine D. Pourakis, Esq.
485 Madison Avenue, 20th Floor
New York, NY 10022
Telephone: 212-319-8500
blm@stevenslee.com
cp@stevenslee.com

Attorneys for Nationstar Mortgage, LLC and CENLAR FSB

STAGG, TERENCE, CONFUSIONE & WABNIK

By: /s/ Jacqueline M. Della Chiesa
Jacqueline M. Della Chiesa
401 Franklin Ave, Suite 400
Garden City, NY 11530
Telephone: 516-812-4500
Facsimile: 516-812-4600
jdellachiesa@stcwlaw.com

Attorney for Defendant Saxon Mortgage, Inc.

PHILLIPS LYTLE LLP

By: /s/ Sean C. McPhee
Sean C. McPhee, Esq. (SM 7144)
Joseph B. Schmit, Esq. (JS 1243)
437 Madison Avenue, 34th floor
New York, New York 10022
Telephone: (212) 759-4888
Facsimile: (212) 308-9079
smcphoe@phillipslytle.com
jschmit@phillipslytle.com

Attorneys for Defendant HSBC Mortgage Services Inc.

WEINER BRODSKY KIDER PC

By: /s/ Mitchel H. Kider
Mitchel H. Kider
1300 19th Street, N.W., 5th Floor
Washington, D.C. 20036
Telephone: (202) 628-2000
Facsimile: (202) 628-2011
kider@thewbkfirm.com

Attorneys for Defendant PHH Mortgage Corporation

MAYER BROWN LLP

By: /s/ Thomas V. Panoff
Matthew D. Ingber
1675 Broadway
New York, New York 10019
Telephone: (212) 506-2500
Facsimile: (212) 262-1910
mingber@mayerbrown.com

Lucia Nale (admitted *pro hac vice*)
Thomas V. Panoff (admitted *pro hac vice*)
71 S. Wacker Drive
Mayer Brown LLP
Chicago, Illinois 60606
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
lnale@mayerbrown.com
tpanoff@mayerbrown.com

Attorneys for Defendant CitiMortgage, Inc.

TROUTMAN SANDERS LLP

By: /s/ Stephen G. Rinehart
Stephen G. Rinehart, Esq. (SR-5527)
The Chrysler Building
405 Lexington Avenue
New York, NY 10174-0700
Telephone: 212-704-6305
Facsimile: 212-704-5957
stephen.rinehart@troutmansanders.com

*Attorneys for BB&T Corporation, Branch Banking
and Trust Company, and FNF Servicing, Inc. f/k/a
Loan Care Servicing Center, Inc.*

K&L GATES LLP

By: /s/ John C. Blessington
Michael DeMarco, *pro hac vice*
John C. Blessington, *pro hac vice*
State Street Financial Center
One Lincoln Street
Boston, MA 02111
Telephone: 617.261.3100
Facsimile: 617.261.3175
michael.demarco@klgates.com
john.blessington@klgates.com

Sarah P. Kenney
599 Lexington Avenue
New York, NY 10022
Telephone: 212.536.3900
Facsimile: 212.536.3901
sarah.kenney@klgates.com

Attorneys for Defendant Sovereign Bank, N.A.

LOCKE LORD LLP

BY: /s R. James DeRose, III
R. James DeRose, III
Joseph N. Froehlich
3 World Financial Center
New York, NY 10281
Tel: 212-415-8600
Fax: 212-303-1331
Email: rderose@lockelord.com
Email: jfroehlich@lockelord.com

OF COUNSEL

Thomas G. Yoxall
LOCKE LORD LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
Tel: 214-740-8000
Fax: 214-740-8800
Email: tyoxall@lockelord.com

-AND-

Thomas J. Cunningham (admitted pro hac vice)
J. Matthew Goodin (admitted pro hac vice)

LOCKE LORD LLP
111 South Wacker Drive
Chicago, Illinois 60606
Tel: 312-443-0700
Fax: 312-443-0336
Email: tcunningham@lockelord.com
Email: jmgoodin@lockelord.com

*Attorneys for Aurora Loan Services, LLC;
Select Portfolio Servicing, Inc.;
U.S. Bank National Association (incorrectly
named as "US Bancorp, a/k/a US Bank, N.A.");
and Vericrest Financial, Inc.*

SNR DENTON US LLP

By: /s/ Patrick E. Fitzmaurice
Patrick E. Fitzmaurice (PF 8648)
1221 Avenue of the Americas
New York, NY 10020
Telephone: 212.768.6700
Facsimile: 212.768.6800
patrick.fitzmaurice@snrdenton.com

*Attorneys for Defendants EverBank successor by
merger to EverHome Mortgage Company and
SunTrust Mortgage, Inc.*

HINSHAW & CULBERTSON LLP

By: /s/ Schuyler B. Kraus
Schuyler B. Kraus (SK 8105)
Ali Ryan Amin (AA 8508)
780 Third Avenue, 4th Floor
New York, NY 10017
Telephone: 212-471-6200
Facsimile: 212-935-1166
skraus@hinshawlaw.com
AAmin@hinshawlaw.com

*Attorneys for Homeward Residential, Inc. f/k/a
American Home Mortgage Servicing, Inc*

CARTER, CONBOY, CASE, BLACKMORE,
MALONEY & LAIRD, P.C.

By: /s/ James A. Resila
James A. Resila (JR 1748)
20 Corporate Woods Boulevard
Albany, NY 12211-2362
Telephone: 518-465-3484
jresila@carterconboy.com

Attorneys for Green Tree Servicing, LLC